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No. 86-1450.

Supreme Court, U.S.  
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**In the  
Supreme Court of the United States.**

OCTOBER TERM, 1986.

PETROS A. PALANDJIAN,  
PETITIONER,

v.

ASHRAF PAHLAVI,  
RESPONDENT.

**Petitioner's Reply Brief.**

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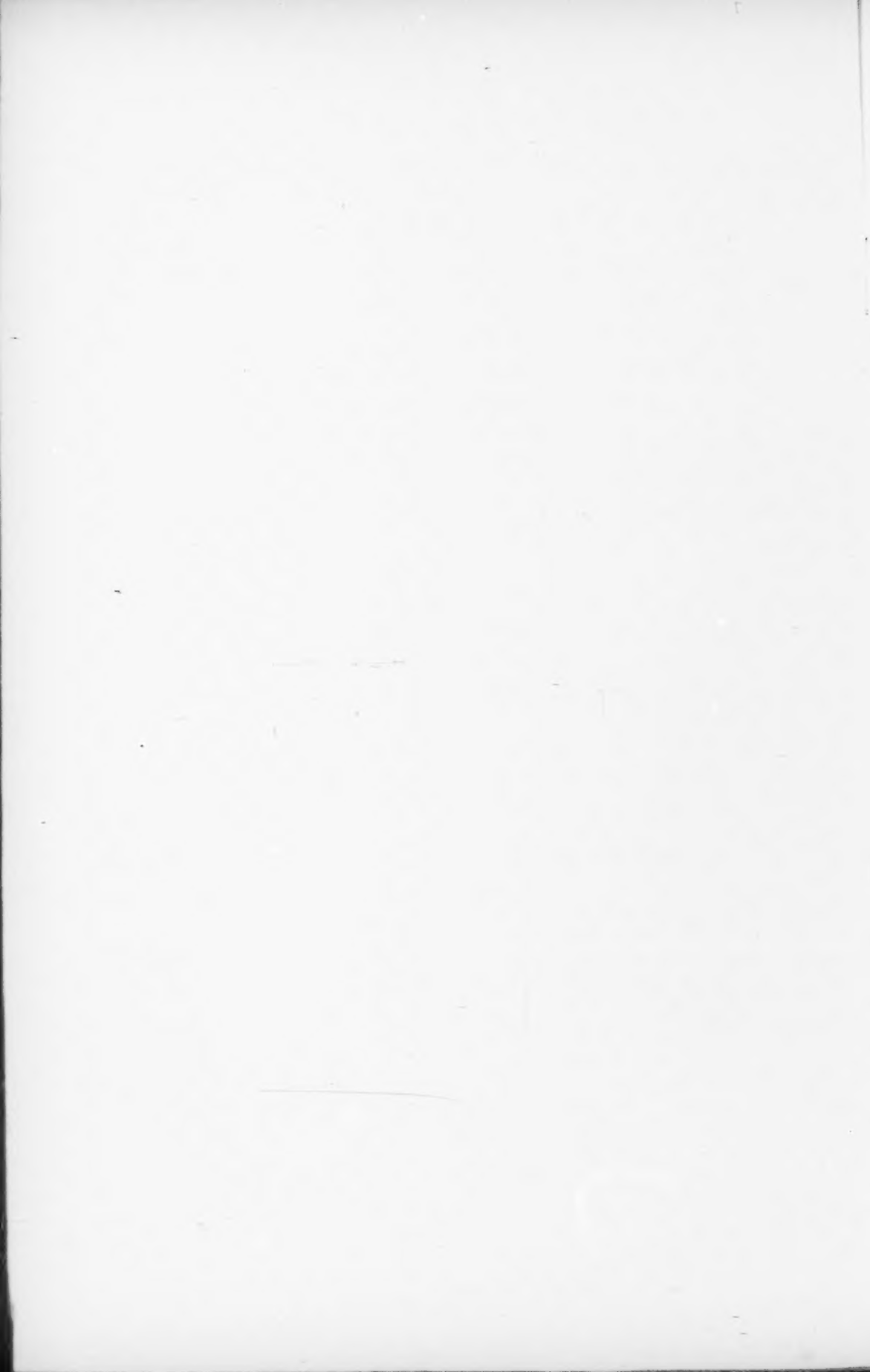


## **Table of Contents.**

Reasons for Granting the Writ	1
I. Palandjian could not have raised a federal question until the First Circuit committed an error which created a federal question	1
II. The First Circuit's decision not to publish its opinion is not relevant to the Supreme Court's determination of whether to grant certiorari	2
Conclusion	3
Appendix	follows page 3

## **Rules.**

United States Supreme Court	
Rule 17	2
United States Court of Appeals for the First Circuit	
Local Rule 36.1	2, A-1
Local Rule 36.2	2n, A-1



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**Reasons for Granting the Writ.**

- I. PALANDJIAN COULD NOT HAVE RAISED A FEDERAL QUESTION UNTIL THE FIRST CIRCUIT COMMITTED AN ERROR WHICH CREATED A FEDERAL QUESTION.**

A party on appeal labors under no burden to anticipate that he will lose and to predict, and therefore argue, against a possible error that the appeals court may commit. Respondent, Ashraf Pahlavi ("Pahlavi"), notes in her Brief in Opposition that the federal question raised by Petitioner, Petros A. Palandjian ("Palandjian"), is raised here for the first time (Respond-

dent's Brief in Opposition at 4). That is true. However, Pahlavi fails to note what should be self evident: that Palandjian could not have raised this federal issue<sup>1</sup> here on review until the First Circuit committed the error.

## II. THE FIRST CIRCUIT'S DECISION NOT TO PUBLISH ITS OPINION IS NOT RELEVANT TO THE SUPREME COURT'S DETERMINATION OF WHETHER TO GRANT CERTIORARI.

Pahlavi's use of Rule 14 of the First Circuit Rules<sup>2</sup> to dissuade the Supreme Court from granting certiorari lacks any foundation in law. The First Circuit's local rules governing the publishing of opinions are not relevant to the Supreme Court's determination of whether to grant certiorari. The local rules are merely an administrative determination used "in the interests both of expedition in the particular case, and of saving time and effort in research on the part of future litigants" (*see* Loc. R. 36.1 at A-1). An entirely different rule governs the determination of whether to grant certiorari (*see* Sup. Ct. R. 17).

To speculate, as Pahlavi has done, about why the First Circuit did not publish its opinion and to ask this Court to be guided and governed by such speculation in deciding whether to grant certiorari is wholly without merit. This Court should not permit a local decision not to publish an opinion, based on a

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<sup>1</sup> The issue raised by Palandjian in his Petition is "Whether the granting of summary judgment is erroneous where the trial court must make a factual determination concerning the opposing party's state of mind and where such factual determination was based on inferences which did not favor the opposing party?"

<sup>2</sup> Respondent has cited and appended a Rule which is no longer in existence. It was superseded on September 1, 1986, when the First Circuit published its most recent local rules (*see* Local R. 36.1 and 36.2 at A-1, which have replaced Rule 14 and Appendix B, which is cited therein).

local rule which may differ from rules in other circuits, to create a presumption against the granting of certiorari.

**Conclusion.**

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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**Appendix.**

**Loc. R. 36.1 OPINIONS.** The volume of filings is such that the court cannot dispose of each case by opinion. Rather, it makes a choice, reasonably accommodated to the particular case, whether to use an order, memorandum and order, or opinion. An opinion is used when the decision calls for more than summary explanation. However, in the interests both of expedition in the particular case, and of saving time and effort in research on the part of future litigants, some opinions are rendered in unpublished form; that is, the opinions are directed to the parties but are not otherwise published, and may not be cited in unrelated cases. As indicated in Local Rule 36.2, the court's policy, when opinions are used, is to prefer that they be published, but in limited situations, described in Local Rule 36.2, where opinions are likely not to break new legal ground or contribute otherwise to legal development, they are issued in unpublished form.

**Loc. R. 36.2 PUBLICATION OF OPINIONS.** The Judicial Council of the First Circuit, pursuant to resolution of the Judicial Conference of the United States, hereby adopts the following plan for the publication of opinions of the United States Court of Appeals for the First Circuit.

(a) **STATEMENT OF POLICY.** In general, the court thinks it desirable that opinions be published and thus be available for citation. The policy may be overcome in some situations where an opinion does not articulate a new rule of law, modify an established rule, apply an established rule to novel facts or serve otherwise as a significant guide to future litigants. (Most opinions dealing with claims for benefits under the Social Security Act, 42 U.S.C. § 205(g), will clearly fall within the exception.)

**(b) MANNER OF IMPLEMENTATION**

1. As members of a panel prepare for argument, they shall give thought to the appropriate mode of disposition (order, memorandum and order, unpublished opinion, published opinion). At conference the mode of disposition shall be discussed and, if feasible, agreed upon. Any agreement reached may be altered in the light of further research and reflection.
2. With respect to cases decided by a unanimous panel with a single opinion, if the writer recommends that the opinion not be published, the writer shall so state in the cover letter accompanying the draft. After an exchange of views, should any judge remain of the view that the opinion should be published, it shall be.
3. When a panel decides a case with a dissent, or with more than one opinion, the opinion or opinions shall be published unless all the participating judges decide against publication. In any case decided by the court in banc the opinion or opinions shall be published.
4. Any party or other interested person may apply for good cause shown to the court for publication of an unpublished opinion.
5. If a District Court opinion in a case has been published, the order of court upon review shall be published even if when the court does not publish an opinion.
6. Unpublished opinions may be cited only in related cases. Only published opinions may be cited otherwise.
7. Periodically the court shall conduct a review in an effort to improve its publication policy and implementation.

